

only with respect to items of tax preference arising in taxable years beginning after December 31, 1986.”

**APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES**

For applicability of amendment by section 701(a) of Pub. L. 99-514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

**§ 59. Other definitions and special rules**

**(a) Alternative minimum tax foreign tax credit**

For purposes of this part—

**(1) In general**

The alternative minimum tax foreign tax credit for any taxable year shall be the credit which would be determined under section 27(a) for such taxable year if—

(A) the pre-credit tentative minimum tax were the tax against which such credit was taken for purposes of section 904 for the taxable year and all prior taxable years beginning after December 31, 1986,

(B) section 904 were applied on the basis of alternative minimum taxable income instead of taxable income, and

(C) the determination of whether any income is high-taxed income for purposes of section 904(d)(2) were made on the basis of the applicable rate specified in section 55(b)(1) in lieu of the highest rate of tax specified in section 1.

**(2) Pre-credit tentative minimum tax**

For purposes of this subsection, the term “pre-credit tentative minimum tax” means the amount determined under the first sentence of section 55(b)(1)(A).

**(3) Election to use simplified section 904 limitation**

**(A) In general**

In determining the alternative minimum tax foreign tax credit for any taxable year to which an election under this paragraph applies—

(i) subparagraph (B) of paragraph (1) shall not apply, and

(ii) the limitation of section 904 shall be based on the proportion which—

(I) the taxpayer’s taxable income (as determined for purposes of the regular tax) from sources without the United States (but not in excess of the taxpayer’s entire alternative minimum taxable income), bears to

(II) the taxpayer’s entire alternative minimum taxable income for the taxable year.

**(B) Election**

**(i) In general**

An election under this paragraph may be made only for the taxpayer’s first taxable year which begins after December 31, 1997,

and for which the taxpayer claims an alternative minimum tax foreign tax credit.

**(ii) Election revocable only with consent**

An election under this paragraph, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

**[(b) Repealed. Pub. L. 115-97, title I, § 12001(b)(10), Dec. 22, 2017, 131 Stat. 2093]**

**(c) Treatment of estates and trusts**

In the case of any estate or trust, the alternative minimum taxable income of such estate or trust and any beneficiary thereof shall be determined by applying part I of subchapter J with the adjustments provided in this part.

**(d) Apportionment of differently treated items in case of certain entities**

**(1) In general**

The differently treated items for the taxable year shall be apportioned (in accordance with regulations prescribed by the Secretary)—

**(A) Regulated investment companies and real estate investment trusts**

In the case of a regulated investment company to which part I of subchapter M applies or a real estate investment company to which part II of subchapter M applies, between such company or trust and shareholders and holders of beneficial interest in such company or trust.

**(B) Common trust funds**

In the case of a common trust fund (as defined in section 584(a)), pro rata among the participants of such fund.

**(2) Differently treated items**

For purposes of this section, the term “differently treated item” means any item of tax preference or any other item which is treated differently for purposes of this part than for purposes of computing the regular tax.

**(e) Optional 10-year writeoff of certain tax preferences**

**(1) In general**

For purposes of this title, any qualified expenditure to which an election under this paragraph applies shall be allowed as a deduction ratably over the 10-year period (3-year period in the case of circulation expenditures described in section 173) beginning with the taxable year in which such expenditure was made (or, in the case of a qualified expenditure described in paragraph (2)(C), over the 60-month period beginning with the month in which such expenditure was paid or incurred).

**(2) Qualified expenditure**

For purposes of this subsection, the term “qualified expenditure” means any amount which, but for an election under this subsection, would have been allowable as a deduction (determined without regard to section 291) for the taxable year in which paid or incurred under—

(A) section 173 (relating to circulation expenditures),

(B) section 174(a) (relating to research and experimental expenditures),

(C) section 263(c) (relating to intangible drilling and development expenditures),

(D) section 616(a) (relating to development expenditures), or

(E) section 617(a) (relating to mining exploration expenditures).

**(3) Other sections not applicable**

Except as provided in this subsection, no deduction shall be allowed under any other section for any qualified expenditure to which an election under this subsection applies.

**(4) Election**

**(A) In general**

An election may be made under paragraph (1) with respect to any portion of any qualified expenditure.

**(B) Revocable only with consent**

Any election under this subsection may be revoked only with the consent of the Secretary.

**(C) Partners and shareholders of S corporations**

In the case of a partnership, any election under paragraph (1) shall be made separately by each partner with respect to the partner's allocable share of any qualified expenditure. A similar rule shall apply in the case of an S corporation and its shareholders.

**(5) Dispositions**

**(A) Application of section 1254**

In the case of any disposition of property to which section 1254 applies (determined without regard to this section), any deduction under paragraph (1) with respect to amounts which are allocable to such property shall, for purposes of section 1254, be treated as a deduction allowable under section 263(c), 616(a), or 617(a), whichever is appropriate.

**(B) Application of section 617(d)**

In the case of any disposition of mining property to which section 617(d) applies (determined without regard to this subsection), any deduction under paragraph (1) with respect to amounts which are allocable to such property shall, for purposes of section 617(d), be treated as a deduction allowable under section 617(a).

**(6) Amounts to which election apply not treated as tax preference**

Any portion of any qualified expenditure to which an election under paragraph (1) applies shall not be treated as an item of tax preference under section 57(a) and section 56 shall not apply to such expenditure.

**[(f) Repealed. Pub. L. 115-97, title I, § 12001(b)(10), Dec. 22, 2017, 131 Stat. 2093]**

**(g) Tax benefit rule**

The Secretary may prescribe regulations under which differently treated items shall be properly adjusted where the tax treatment giving rise to such items will not result in the re-

duction of the taxpayer's regular tax for the taxable year for which the item is taken into account or for any other taxable year.

**(h) Coordination with certain limitations**

The limitations of sections 704(d), 465, and 1366(d) (and such other provisions as may be specified in regulations) shall be applied for purposes of computing the alternative minimum taxable income of the taxpayer for the taxable year with the adjustments of sections 56, 57, and 58.

**(i) Special rule for amounts treated as tax preference**

For purposes of this subtitle (other than this part), any amount shall not fail to be treated as wholly exempt from tax imposed by this subtitle solely by reason of being included in alternative minimum taxable income.

**(j) Treatment of unearned income of minor children**

**(1) In general**

In the case of a child to whom section 1(g) applies, the exemption amount for purposes of section 55 shall not exceed the sum of—

- (A) such child's earned income (as defined in section 911(d)(2)) for the taxable year, plus
- (B) \$5,000.

**(2) Inflation adjustment**

In the case of any taxable year beginning in a calendar year after 1998, the dollar amount in paragraph (1)(B) shall be increased by an amount equal to the product of—

- (A) such dollar amount, and
- (B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "1997" for "2016" in subparagraph (A)(ii) thereof.

If any increase determined under the preceding sentence is not a multiple of \$50, such increase shall be rounded to the nearest multiple of \$50.

(Added Pub. L. 99-514, title VII, § 701(a), Oct. 22, 1986, 100 Stat. 2336; amended Pub. L. 100-647, title I, §§ 1007(e), 1014(e)(5)(A), Nov. 10, 1988, 102 Stat. 3432, 3561; Pub. L. 101-239, title VII, §§ 7611(f)(5)(B), (6), 7612(e)(1), 7811(d)(1)(A), (j)(7), Dec. 19, 1989, 103 Stat. 2373, 2374, 2408, 2412; Pub. L. 101-508, title XI, §§ 11101(d)(3), 11531(b)(2), 11702(d), 11801(c)(2)(D), Nov. 5, 1990, 104 Stat. 1388-405, 1388-490, 1388-514, 1388-523; Pub. L. 102-486, title XIX, § 1915(c)(3), Oct. 24, 1992, 106 Stat. 3024; Pub. L. 104-188, title I, §§ 1601(b)(2)(D), 1702(a)(1), 1703(e), 1704(m)(3), Aug. 20, 1996, 110 Stat. 1833, 1868, 1875, 1883; Pub. L. 105-34, title X, § 1057(a), title XI, § 1103(a), title XII, § 1201(b)(1), Aug. 5, 1997, 111 Stat. 945, 966, 994; Pub. L. 105-206, title VI, §§ 6011(a), 6023(2), July 22, 1998, 112 Stat. 817, 824; Pub. L. 108-357, title IV, § 421(a)(1), Oct. 22, 2004, 118 Stat. 1514; Pub. L. 115-97, title I, §§ 11002(d)(4), 12001(b)(3)(C), (10), Dec. 22, 2017, 131 Stat. 2061, 2093.)

**INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS**

*For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.*

## AMENDMENTS

2017—Subsec. (a)(1)(C). Pub. L. 115-97, §12001(b)(3)(C)(i), substituted “section 55(b)(1) in lieu of the highest rate of tax specified in section 1” for “subparagraph (A)(i) or (B)(i) of section 55(b)(1) (whichever applies) in lieu of the highest rate of tax specified in section 1 or 11 (whichever applies)”.

Subsec. (a)(2). Pub. L. 115-97, §12001(b)(3)(C)(ii), substituted “means the amount determined under the first sentence of section 55(b)(1)(A).” for “means—

“(A) in the case of a taxpayer other than a corporation, the amount determined under the first sentence of section 55(b)(1)(A)(i), or

“(B) in the case of a corporation, the amount determined under section 55(b)(1)(B)(i).”

Subsec. (b). Pub. L. 115-97, §12001(b)(10), struck out subsec. (b). Text read as follows: “In the case of any corporation for which a credit is allowable for the taxable year under section 30A or 936, alternative minimum taxable income shall not include any income with respect to which a credit is determined under section 30A or 936.”

Subsec. (f). Pub. L. 115-97, §12001(b)(10), struck out subsec. (f). Text read as follows: “Except as otherwise provided in this part, section 291 (relating to cutback of corporate preferences) shall apply before the application of this part.”

Subsec. (j)(2)(B). Pub. L. 115-97, §11002(d)(4), substituted “for ‘2016’ in subparagraph (A)(ii)” for “for ‘1992’ in subparagraph (B)”.

2004—Subsec. (a)(2) to (4). Pub. L. 108-357 redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to limitation on alternative minimum tax foreign tax credit and carryback and carryforward of excess.

1998—Subsec. (a)(3), (4). Pub. L. 105-206, §6011(a), redesignated par. (3), relating to election to use simplified section 904 limitation, as (4).

Subsec. (b). Pub. L. 105-206, §6023(2), substituted “credits under section 30A or 936” for “section 936 credit” in heading.

1997—Subsec. (a)(2)(C). Pub. L. 105-34, §1057(a), struck out subpar. (C) which read as follows:

“(C) EXCEPTION.—Subparagraph (A) shall not apply to any domestic corporation if—

“(i) more than 50 percent of the stock of such domestic corporation (by vote and value) is owned by United States persons who are not members of an affiliated group (as defined in section 1504 of such Code) which includes such corporation,

“(ii) all of the activities of such corporation are conducted in 1 foreign country with which the United States has an income tax treaty in effect and such treaty provides for the exchange of information between such foreign country and the United States,

“(iii) all of the current earnings and profits of such corporation are distributed at least annually (other than current earnings and profits retained for normal maintenance or capital replacements or improvements of an existing business), and

“(iv) all of such distributions by such corporation to United States persons are used by such persons in a trade or business conducted in the United States.”

Subsec. (a)(3). Pub. L. 105-34, §1103(a), added par. (3) relating to election to use simplified section 904 limitation.

Subsec. (j). Pub. L. 105-34, §1201(b)(1), amended subsec. (j) generally, restating limitation on exemption amount, adding provisions for inflation adjustment of such amount, and deleting provisions relating to limitation based on parental minimum tax and unused parental minimum tax exemption.

1996—Subsec. (a)(1)(A). Pub. L. 104-188, §1703(e)(1), substituted “the pre-credit tentative minimum tax” for “the amount determined under section 55(b)(1)(A)”.

Subsec. (a)(1)(C). Pub. L. 104-188, §1703(e)(2), substituted “specified in subparagraph (A)(i) or (B)(i) of section 55(b)(1) (whichever applies)” for “specified in section 55(b)(1)(A)”.

Subsec. (a)(2)(A)(i). Pub. L. 104-188, §1703(e)(1), substituted “the pre-credit tentative minimum tax” for “the amount determined under section 55(b)(1)(A)”.

Subsec. (a)(2)(A)(ii). Pub. L. 104-188, §1703(e)(3), substituted “which would be the pre-credit tentative minimum tax” for “which would be determined under section 55(b)(1)(A)”.

Subsec. (a)(3). Pub. L. 104-188, §1703(e)(4), added par. (3).

Subsec. (b). Pub. L. 104-188, §1601(b)(2)(D), substituted “section 30A or 936, alternative minimum taxable income shall not include any income with respect to which a credit is determined under section 30A or 936.” for “section 936, alternative minimum taxable income shall not include any amount with respect to which the requirements of subparagraph (A) or (B) of section 936(a)(1) are met.”

Subsec. (j)(1)(B). Pub. L. 104-188, §1704(m)(3), substituted “twice the amount in effect for the taxable year under section 63(c)(5)(A)” for “\$1,000”.

Subsec. (j)(3)(B). Pub. L. 104-188, §1702(a)(1), substituted “section 1(g)(3)(B)” for “section 1(i)(3)(B)”.

1992—Subsec. (a)(2)(A)(ii). Pub. L. 102-486 substituted “and section 57(a)(2)(E)” for “and the alternative tax energy preference deduction under section 56(h)”.

1990—Subsec. (a)(1)(B) to (D). Pub. L. 101-508, §11801(c)(2)(D), inserted “and” at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: “for purposes of section 904, any increase in alternative minimum taxable income by reason of section 56(c)(1)(A) (relating to adjustment for book income) shall have the same proportionate source (and character) as alternative minimum taxable income determined without regard to such increase, and”.

Subsec. (a)(2)(A)(ii). Pub. L. 101-508, §11531(b)(2), inserted before period at end “and the alternative tax energy preference deduction under section 56(h)”.

Subsec. (j). Pub. L. 101-508, §11101(d)(3)(A), substituted “section 1(g)” for “section 1(i)” in pars. (1), (2)(A), (B)(i)(I), (II), (D), and (3).

Subsec. (j)(1)(B). Pub. L. 101-508, §11702(d)(1), inserted “(or, if greater, the child’s share of the unused parental minimum tax exemption)” before period at end.

Subsec. (j)(2)(C). Pub. L. 101-508, §11101(d)(3)(B), substituted “section 1(g)(3)(B)” for “section 1(i)(3)(B)”.

Subsec. (j)(2)(D). Pub. L. 101-508, §11702(d)(3), substituted “paragraphs (3)(D), (5), and (6)” for “paragraphs (5) and (6)”.

Subsec. (j)(3). Pub. L. 101-508, §11702(d)(2), added par. (3).

1989—Subsec. (a)(2)(C). Pub. L. 101-239, §7612(e)(1), added subpar. (C).

Subsec. (e)(1). Pub. L. 101-239, §7611(f)(5)(B), inserted before period at end “(or, in the case of a qualified expenditure described in paragraph (2)(C), over the 60-month period beginning with the month in which such expenditure was paid or incurred)”.

Subsec. (g). Pub. L. 101-239, §7811(d)(1)(A), substituted “for the taxable year for which the item is taken into account or for any other taxable year” for “for any taxable year”.

Subsec. (i). Pub. L. 101-239, §7611(f)(6), substituted “amounts” for “interest” in heading and “any amount shall” for “interest shall” in text.

Subsec. (j)(2)(D). Pub. L. 101-239, §7811(j)(7), substituted “Other rules” for “Others rules” in heading.

1988—Subsec. (a)(1)(D). Pub. L. 100-647, §1007(e)(3), added subpar. (D).

Subsec. (e)(2). Pub. L. 100-647, §1007(e)(1), inserted “(determined without regard to section 291)” after “as a deduction”.

Subsec. (h). Pub. L. 100-647, §1007(e)(2), substituted “taxable year with the adjustments of sections 56, 57, and 58” for “taxable year—

“(1) with the adjustments of section 56, and

“(2) by not taking into account any deduction to the extent such deduction is an item of tax preference under section 57(a)”.

Subsec. (i). Pub. L. 100-647, §1007(e)(4), inserted “(other than this part)” after “of this subtitle” and substituted “subtitle” for “title” before “solely”.

Subsec. (j). Pub. L. 100-647, §1014(e)(5)(A), added subsec. (j).

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(4) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115-97, set out as a note under section 1 of this title.

Amendment by section 12001(b)(3)(C), (10) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 12001(c) of Pub. L. 115-97, set out as a note under section 11 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years beginning after Dec. 31, 2004, see section 421(b) of Pub. L. 108-357, set out as a note under section 53 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(2) of Pub. L. 105-206 effective July 22, 1998, see section 6023(32) of Pub. L. 105-206, set out as a note under section 34 of this title.

Amendment by section 6011(a) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1057(b), Aug. 5, 1997, 111 Stat. 945, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105-34, title XI, §1103(b), Aug. 5, 1997, 111 Stat. 966, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105-34, title XII, §1201(c), Aug. 5, 1997, 111 Stat. 994, provided that: "The amendments made by this section [amending this section and sections 63 and 6103 of this title] shall apply to taxable years beginning after December 31, 1997."

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1601(b)(2)(D) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104-188, set out as an Effective Date note under section 30A of this title.

Amendment by section 1702(a)(1) of Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

Amendment by section 1703(e) of Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

Amendment by section 1704(m)(3) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, see section 1704(m)(4) of Pub. L. 104-188, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-486 applicable to taxable years beginning after Dec. 31, 1992, see section 1915(d) of Pub. L. 102-486, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(3) of Pub. L. 101-508 applicable to taxable years beginning after Dec. 31,

1990, see section 11101(e) of Pub. L. 101-508, set out as a note under section 1 of this title.

Amendment by section 11531(b)(2) of Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 11531(c) of Pub. L. 101-508, set out as a note under section 56 of this title.

Pub. L. 101-508, title XI, §11702(j), Nov. 5, 1990, 104 Stat. 1388-516, provided that: "Any amendment made by this section [amending this section and sections 135, 216, 355, 367, 447, 453B, 468B, 2056, 2056A, 2523, 4980B, and 6114 of this title] shall take effect as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100-647] to which such amendment relates."

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7611(f)(6) of Pub. L. 101-239 applicable to taxable years beginning after Dec. 31, 1989, see section 7611(g)(1) of Pub. L. 101-239, set out as a note under section 56 of this title.

Amendment by section 7611(f)(5)(B) of Pub. L. 101-239 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1989, see section 7611(g)(2) of Pub. L. 101-239, set out as a note under section 56 of this title.

Pub. L. 101-239, title VII, §7612(e)(2), Dec. 19, 1989, 103 Stat. 2375, provided that:

"(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after March 31, 1990.

"(B) SPECIAL RULE FOR YEAR WHICH INCLUDES MARCH 31, 1990.—In the case of any taxable year (of a corporation described in subparagraph (C) of section 59(a)(2) of the Internal Revenue Code of 1986 (as added by paragraph (1))) which begins after December 31, 1989, and includes March 31, 1990, the amount determined under clause (ii) of section 59(a)(2)(A) of such Code shall be an amount which bears the same ratio to the amount which would have been determined under such clause without regard to this subparagraph as the number of days in such taxable year on or before March 31, 1990, bears to the total number of days in such taxable year."

Amendment by section 7811(d)(1)(A), (j)(7) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1007(e) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title I, §1014(e)(5)(B), Nov. 10, 1988, 102 Stat. 3562, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1988."

#### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as a note under section 55 of this title.

#### SAVINGS PROVISION

For provisions that nothing in amendment by section 11801 of Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990,

see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

**CONSIDERATION OF CERTAIN TAXES TREATED AS PAID OR ACCRUED UNDER SECTION 904(c) IN DETERMINATION OF ALTERNATIVE MINIMUM TAX FOREIGN TAX CREDIT**

Pub. L. 100-647, title I, §1007(f)(5), Nov. 10, 1988, 102 Stat. 3434, provided that: “In determining the amount of the alternative minimum tax foreign tax credit under section 59 of the 1986 Code, there shall not be taken into account any taxes paid or accrued in a taxable year beginning after December 31, 1986, which are treated under section 904(c) of the 1986 Code as paid or accrued in a taxable year beginning on or before December 31, 1986.”

**APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES**

For applicability of amendment by section 701(a) of Pub. L. 99-514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

**PART VII—BASE EROSION AND ANTI-ABUSE TAX**

Sec.

59A. Tax on base erosion payments of taxpayers with substantial gross receipts.

**PRIOR PROVISIONS**

A prior part VII, Environmental Tax, consisted of section 59A, prior to repeal by Pub. L. 113-295, div. A, title II, §221(a)(12)(A), Dec. 19, 2014, 128 Stat. 4038.

**§ 59A. Tax on base erosion payments of taxpayers with substantial gross receipts**

**(a) Imposition of tax**

There is hereby imposed on each applicable taxpayer for any taxable year a tax equal to the base erosion minimum tax amount for the taxable year. Such tax shall be in addition to any other tax imposed by this subtitle.

**(b) Base erosion minimum tax amount**

For purposes of this section—

**(1) In general**

Except as provided in paragraphs (2) and (3), the term “base erosion minimum tax amount” means, with respect to any applicable taxpayer for any taxable year, the excess (if any) of—

(A) an amount equal to 10 percent (5 percent in the case of taxable years beginning in calendar year 2018) of the modified taxable income of such taxpayer for the taxable year, over

(B) an amount equal to the regular tax liability (as defined in section 26(b)) of the taxpayer for the taxable year, reduced (but not below zero) by the excess (if any) of—

(i) the credits allowed under this chapter against such regular tax liability, over

(ii) the sum of—

(I) the credit allowed under section 38 for the taxable year which is properly allocable to the research credit determined under section 41(a), plus

(II) the portion of the applicable section 38 credits not in excess of 80 percent of the lesser of the amount of such credits or the base erosion minimum tax amount (determined without regard to this subclause).

**(2) Modifications for taxable years beginning after 2025**

In the case of any taxable year beginning after December 31, 2025, paragraph (1) shall be applied—

(A) by substituting “12.5 percent” for “10 percent” in subparagraph (A) thereof, and

(B) by reducing (but not below zero) the regular tax liability (as defined in section 26(b)) for purposes of subparagraph (B) thereof by the aggregate amount of the credits allowed under this chapter against such regular tax liability rather than the excess described in such subparagraph.

**(3) Increased rate for certain banks and securities dealers**

**(A) In general**

In the case of a taxpayer described in subparagraph (B) who is an applicable taxpayer for any taxable year, the percentage otherwise in effect under paragraphs (1)(A) and (2)(A) shall each be increased by one percentage point.

**(B) Taxpayer described**

A taxpayer is described in this subparagraph if such taxpayer is a member of an affiliated group (as defined in section 1504(a)(1)) which includes—

(i) a bank (as defined in section 581), or

(ii) a registered securities dealer under section 15(a) of the Securities Exchange Act of 1934.

**(4) Applicable section 38 credits**

For purposes of paragraph (1)(B)(ii)(II), the term “applicable section 38 credits” means the credit allowed under section 38 for the taxable year which is properly allocable to—

(A) the low-income housing credit determined under section 42(a),

(B) the renewable electricity production credit determined under section 45(a), and

(C) the investment credit determined under section 46, but only to the extent properly allocable to the energy credit determined under section 48.

**(c) Modified taxable income**

For purposes of this section—

**(1) In general**

The term “modified taxable income” means the taxable income of the taxpayer computed under this chapter for the taxable year, determined without regard to—

(A) any base erosion tax benefit with respect to any base erosion payment, or

(B) the base erosion percentage of any net operating loss deduction allowed under section 172 for the taxable year.

**(2) Base erosion tax benefit**

**(A) In general**

The term “base erosion tax benefit” means—